

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BIGFOOT VENTURES LLC,

Plaintiff,

v.

KINTZING LTD,

Defendant.

Civil Action No.: 18-cv-10580

**COMPLAINT FOR
DECLARATORY JUDGMENT**

Plaintiff, Bigfoot Ventures LLC (“Bigfoot” or “Plaintiff”), by and through its attorneys, Morton & Associates LLP, and as for its Complaint for Declaratory Judgment against Defendant Kintzing Ltd (“Kintzing” or “Defendant”) alleges, upon information and belief, as follows:

NATURE OF THE ACTION

1. This is an action under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, for a declaration that Plaintiff does infringe upon any of Defendant’s copyright-protected works, including those appearing on www.thecelebritycafe.com.

PARTIES

2. Bigfoot is a limited liability company, duly organized and existing under the laws of the State of New York, with a principal place of business in New York County.
3. Upon information and belief, Kintzing is a private limited company organized under the laws of the United Kingdom, with a principal place of business at Unit 11, Studio 3 Latimer Studios, Latimer Road, London, United Kingdom W10 6RQ.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over the instant action pursuant to 28 U.S.C. §§ 1331, 1338. The claims alleged in this Complaint arise under the

Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, and the controversies to be resolved herein arise under the U.S. Copyright Act, 17 U.S.C. § 101, *et seq.*

5. Upon information and belief, this Court has personal jurisdiction over Kintzing, pursuant to CPLR § 302(a)(3)(i)-(ii) because Defendant has committed tortious acts without the state causing injury to persons within the state, derives substantial revenue from services rendered in the state, expects to have consequences in the state and derives substantial revenue from international commerce.
6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claim occurred in New York County.

STATEMENT OF FACTS

Plaintiff Receives a Notice of Copyright Infringement

7. On or around November 9, 2018, Plaintiff received an e-mail from Defendant's representative, Shalisha Bonville, a License Compliance Specialist from ImageRights International, Inc., alleging that, as the purported owner of www.thecelebritycafe.com (the "Website"), on or around June 30, 2018, Bigfoot ran an article on the Website entitled 'Amandla Stenberg Comes Out As Gay', which prominently featured a photograph allegedly owned by Kintzing. The e-mail, dated November 9, 2018 (the "E-Mail") is annexed hereto as **Exhibit A**.
8. Ms. Bonville premised her allegations upon nothing more than her conclusory statement that "[Defendant's] copyrighted image was discovered on your website www.thecelebritycafe.com", without citing a scintilla of evidence supporting her accusation that Bigfoot is responsible for the content appearing on the Website.

9. Furthermore, Ms. Bonville asserted that, as the owner of the www.thecelebritycafe.com, Bigfoot infringed upon Defendant's photograph of Amandla Stenberg, assigned Image ID No. KZCR10048 (the "Photograph"), by allegedly re-publishing the Photograph in an article without a license or authorization. Once again, Ms. Bonville neglected to attach any documentation evincing Defendant as the owner of the Photograph beyond a conclusory statement.
10. The E-Mail concluded with a demand that Bigfoot either produce evidence illustrating any license or authority to re-publish the Photograph on the Website or pay a \$1,500 "settlement fee" and execute a settlement and release agreement.

Plaintiff Does Not Own or Operate the www.thecelebritycafe.com Website

11. According to comprehensive WHOIS records, the Website is owned by The Celebrity Cafe Limited, an entity incorporated in the United Kingdom, with a registered office address in Manchester, United Kingdom.
12. Bigfoot, itself a New York entity, and The Celebrity Cafe Limited are not in a partnership, joint venture or otherwise affiliated in a manner that would make Bigfoot liable for the actions of The Celebrity Café Limited, or vice-versa.
13. Bigfoot is in no way responsible or liable for the conduct of the entity The Celebrity Cafe Limited, the Website or any content that appears on it.
14. By virtue of the foregoing, Plaintiff is compelled to seek a declaration from this Court that it has not infringed upon Defendant's intellectual property as alleged in the Letter.

CLAIM FOR RELIEF

Declaratory Judgment of No Copyright Infringement

15. Plaintiff hereby repeats each and every allegation set forth in the preceding paragraphs of this Complaint as if fully set forth herein.
16. Defendant alleges that, as the owner and operator of the Website, Plaintiff is infringing upon its copyright-protected works appearing on its www.thecelebritycafe.com website.
17. An actual, present and justiciable controversy exists between Plaintiff and Defendant concerning whether or not Plaintiff is infringing upon Defendant's copyright-protected material.
18. Plaintiff seeks a Declaratory Judgment from this Court that, because Bigfoot is not affiliated with the Website, it does not have any control over, and is not responsible for, any of the infringing material that the Website purportedly features.

WHEREFORE, based on the foregoing, Plaintiff demands judgment against Defendant as follows:

- i. A declaration that Plaintiff does not infringe upon any of Defendant's copyright-protected works, including those appearing on www.thecelebritycafe.com.
- ii. Attorneys' fees and the costs and disbursements of this action.
- iii. Such other and further relief that this Court deems just and proper.

JURY DEMAND

Plaintiff respectfully requests a trial by jury as to all issues.

Dated: New York, New York
November 13, 2018

Morton & Associates LLP


By: 
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EXHIBIT A



ImageRights Copyright Infringement Claim Notification. Case #63485

Shalisha Bonville <shalisha.bonville@imagerights.com>

Fri, Nov 9, 2018 at 3:20 PM

To: rp@moas.com

Cc: ImageRights Case 63485 <msg.u18183.c63485.72d306c6e@system.imagerights.com>

Attn: Bigfoot Ventures LLC dba TheCelebrityCafe.com,

ImageRights International (www.imagerights.com), headquartered in Boston, MA, is a copyright and licensing agent to professional photographers, photo agencies, media companies and publishers who discover unlicensed uses of their works. KINTZING LTD's copyrighted image (Image ID: KZCR10048) was discovered on your website thecelebritycafe.com for which there is no record of a license. If the image was licensed under an alternate company name (dba) or in the name of a third party, please reply to this email with information on the sales order, invoice or other pertinent licensing information.



However, if a valid license for this use of the image does not exist, a fee of US\$ 1,500.00 is required to resolve this matter. As the owner of the site, you are liable for the unauthorized use in the absence of a valid license, including cases in which a website designer, employee or intern is responsible for the inclusion of this image on your website. If your use of this image without a license was unintentional, for example if the image was found on the Internet and believed to be available for free use, it is still in violation of copyright law (Title 17 of the US Copyright Act) and ceasing use of the image now will not release you or your organization from liability in this regard.

To resolve this matter, please follow these steps:

1. Review the case documentation, including a screen shot of the infringed image(s) displayed on your website, at <http://www.imagerights.com/to/a0c9ebe64718e5ba>. Your Case Access Code is 418447-584360-166733.
2. Once you have reviewed the documentation, confirmed that a valid license for this use is not in place, and reviewed the Settlement and Release Agreement, then please select Request Invoice to Resolve Claim.
3. Once you have removed the infringing uses of the image(s) from your website, please confirm by replying to this email.

If you would like to speak with an ImageRights License Compliance Specialist regarding this matter, please email us at irlc@imagerights.com or call (617) 765-7228 ext. 706. Alternatively, please provide the contact information for the appropriate person to whom we should address this matter, if someone other than you.

IN ALL COMMUNICATIONS WITH IMAGERIGHTS, PLEASE INCLUDE YOUR CASE NUMBER IN THE SUBJECT LINE OF THE EMAIL. **YOUR CASE NUMBER IS CAS-63485.**

This mail is for settlement purposes only and is issued without prejudice to any rights or remedies available to ImageRights and KINTZING LTD, all of which are expressly reserved.

Sincerely,

Shalisha Bonville

License Compliance Specialist
Direct: (617) 765-7228 ext. 706
International Toll Free: (877) 455-3084 ext. 706



ImageRights International, Inc.

51 Melcher St, 1st Floor
Boston, MA 02210
<https://www.imagerights.com>



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